

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HARVARD REAL ESTATE-ALLSTON, INC.,

Plaintiff,

v.

Civil Action No. 04-12249-DPW

KMART CORPORATION,

Defendant.

DECLARATION OF KATHLEEN A. RAHBANY IN SUPPORT OF KMART CORPORATION'S OPPOSITION TO PLAINTIFF HARVARD REAL ESTATE-ALLSTON, INC.'S MOTION TO DISMISS COUNTERCLAIMS AND MOTION TO REMAND CASE TO STATE COURT

I, Kathleen A. Rahbany, declare that the following is true and correct:

1. I am an associate of the law firm Craig and Macauley Professional Corporation, counsel for Kmart Corporation ("Kmart") in this action, and am duly admitted and in good standing with the Bar of this Court. This declaration is submitted in support of Kmart's opposition to plaintiff Harvard Real Estate-Allston, Inc.'s ("Harvard") Motion to Dismiss Counterclaims and Motion to Remand to State Court.

2. Attached hereto as Exhibit "A-1" is a true and accurate copy of Harvard's Assumption Objection, dated April 3, 2003.

3. Attached hereto as Exhibit "A-2" is a true and accurate copy of Kmart's Opposition to the Assumption Objection, dated August 29, 2003.

4. Attached hereto as Exhibit "B" is a true and accurate copy of Harvard's Reply to Kmart's Opposition to the Assumption Objections, dated September 30, 2003.

5. Attached hereto as Exhibit "C" is a true and accurate copy of the Withdrawal of Assumption Objection, dated January 29, 2004.

6. Attached hereto as Exhibit "D" is a true and accurate copy of Kmart's Motion to Dismiss with Prejudice Harvard's Assumption Objection, dated February 5, 2004.

7. Attached hereto as Exhibit "E" is a true and accurate copy of the Order of the Bankruptcy Court, dated April 2, 2004.

8. Attached hereto as Exhibit "F" is a true and accurate copy of Harvard's notice to vacate/notice of termination, dated April 23, 2004.

9. Attached hereto as Exhibit "G" is a true and accurate copy of Harvard's Motion to Confirm, dated March 10, 2004.

10. Attached hereto as Exhibit "H" is a true and accurate copy of the Bankruptcy Court's order denying Harvard's Motion to Confirm without prejudice, dated April 20, 2004.

11. Attached hereto as Exhibit "I" is a true and accurate copy of the transcript of the hearing before the Bankruptcy Court, dated September 29, 2004.

12. Attached hereto as Exhibit "J" is a true and accurate copy of Kmart's Motion to Stay the Adversary Proceeding, dated November 19, 2004.

13. Attached hereto as Exhibit "K" is a true and accurate copy of Kmart's Motion to Dismiss the Adversary Proceeding, dated December 9, 2004.

14. Attached hereto as Exhibit "L" is a true and accurate copy of the unreported decision *A. Levet Properties Partnership v. Bank One, N.A.*, 2003 U.S. Dist. LEXIS 12777, *8 (E.D. La. 2003).

15. Attached hereto as Exhibit "M" is a true and accurate copy of the unreported decision *Dickal 770 L.L.C. v. PRN Corporation*, 2002 U.S. Dist. LEXIS 10478, *9 (N.D. Ill. 2002).

Signed under the pains and penalties of perjury this 13th day of December, 2004.



Kathleen A. Rahbany